

SECOND REGULAR SESSION
SENATE COMMITTEE SUBSTITUTE FOR
HOUSE BILL NO. 1653
93RD GENERAL ASSEMBLY

Reported from the Committee on Education, April 12, 2006, with recommendation that the Senate Committee Substitute do pass and be placed on the Consent Calendar.

4820L.02C

TERRY L. SPIELER, Secretary.

AN ACT

To repeal section 452.340, RSMo, and to enact in lieu thereof one new section relating to child support.

Be it enacted by the General Assembly of the State of Missouri, as follows:

Section A. Section 452.340, RSMo, is repealed and one new section enacted in lieu thereof, to be known as section 452.340, to read as follows:

452.340. 1. In a proceeding for dissolution of marriage, legal separation or child support, the court may order either or both parents owing a duty of support to a child of the marriage to pay an amount reasonable or necessary for the support of the child, including an award retroactive to the date of filing the petition, without regard to marital misconduct, after considering all relevant factors including:

- (1) The financial needs and resources of the child;
- (2) The financial resources and needs of the parents;
- (3) The standard of living the child would have enjoyed had the marriage not been dissolved;
- (4) The physical and emotional condition of the child, and the child's educational needs;
- (5) The child's physical and legal custody arrangements, including the amount of time the child spends with each parent and the reasonable expenses associated with the custody or visitation arrangements; and
- (6) The reasonable work-related child care expenses of each parent.

2. The obligation of the parent ordered to make support payments shall abate, in whole or in part, for such periods of time in excess of thirty consecutive

EXPLANATION—Matter enclosed in bold-faced brackets [thus] in this bill is not enacted and is intended to be omitted in the law.

19 days that the other parent has voluntarily relinquished physical custody of a
20 child to the parent ordered to pay child support, notwithstanding any periods of
21 visitation or temporary physical and legal or physical or legal custody pursuant
22 to a judgment of dissolution or legal separation or any modification thereof. In
23 a IV-D case, the division of child support enforcement may determine the amount
24 of the abatement pursuant to this subsection for any child support order and
25 shall record the amount of abatement in the automated child support system
26 record established pursuant to chapter 454, RSMo. If the case is not a IV-D case
27 and upon court order, the circuit clerk shall record the amount of abatement in
28 the automated child support system record established in chapter 454, RSMo.

29 3. Unless the circumstances of the child manifestly dictate otherwise and
30 the court specifically so provides, the obligation of a parent to make child support
31 payments shall terminate when the child:

32 (1) Dies;

33 (2) Marries;

34 (3) Enters active duty in the military;

35 (4) Becomes self-supporting, provided that the custodial parent has
36 relinquished the child from parental control by express or implied consent;

37 (5) Reaches age eighteen, unless the provisions of subsection 4 or 5 of this
38 section apply; or

39 (6) Reaches age twenty-two, unless the provisions of the child support
40 order specifically extend the parental support order past the child's twenty-second
41 birthday for reasons provided by subsection 4 of this section.

42 4. If the child is physically or mentally incapacitated from supporting
43 himself and insolvent and unmarried, the court may extend the parental support
44 obligation past the child's eighteenth birthday.

45 5. **(1) (a)** If when a child reaches age eighteen, the child is enrolled in
46 and attending a secondary school program of instruction, the parental support
47 obligation shall continue, if the child continues to attend and progresses toward
48 completion of said program, until the child completes such program or reaches
49 age twenty-one, whichever first occurs.

50 **(b)** If the child is enrolled in an institution of vocational or higher
51 education not later than October first following graduation from a secondary
52 school or completion of a graduation equivalence degree program and, **except as**
53 **provided in subdivision (3) of this subsection**, so long as the child enrolls
54 for and completes at least twelve hours of credit each semester, not including the

55 summer semester, at an institution of vocational or higher education and achieves
56 grades sufficient to reenroll at such institution, the parental support obligation
57 shall continue until the child completes his or her education, or until the child
58 reaches the age of twenty-two, whichever first occurs. **If the circumstances of**
59 **the child manifestly dictate, the court may waive the October first**
60 **deadline for enrollment required by this subsection.**

61 (2) To remain eligible for such continued parental support, **not more**
62 **than thirty days after the child receives a written request from the**
63 **parent and** at the beginning of each semester **thereafter** the child shall submit
64 to each parent a transcript or similar official document provided by the
65 institution of vocational or higher education which includes the courses the child
66 is enrolled in and has completed for each term, the grades and credits received
67 for each such course, and an official document from the institution listing the
68 courses which the child is enrolled in for the upcoming term and the number of
69 credits for each such course. [If the circumstances of the child manifestly dictate,
70 the court may waive the October first deadline for enrollment required by this
71 subsection.] **The parent shall notify the child in such written request that**
72 **failure to submit such transcript or official document within thirty**
73 **days of such request and at the beginning of each semester thereafter**
74 **shall relieve the parent of the parent's obligation to support the child**
75 **during such semester. The child may comply with this subsection by**
76 **submitting any required fees along with a written request to the**
77 **institution that it forward such transcript or official document directly**
78 **to the parent.**

79 (3) If the child has pursued a path of continuous attendance and has
80 demonstrated evidence of a plan to continue to do so, the court may enter a
81 judgment abating support for a period of up to five months for any semester in
82 which the child completes at least six but less than twelve credit hours; however,
83 such five-month period of abatement shall only be granted one time for each
84 child.

85 (4) If the child is enrolled in such an institution, the child or parent
86 obligated to pay support may petition the court to amend the order to direct the
87 obligated parent to make the payments directly to the child.

88 (5) As used in this section, an "institution of vocational education" means
89 any postsecondary training or schooling for which the student is assessed a fee
90 and attends classes regularly. "Higher education" means any junior college,

91 community college, college, or university at which the child attends classes
92 regularly.

93 **(6)** A child who has been diagnosed with a learning disability, or whose
94 physical disability or diagnosed health problem limits the child's ability to carry
95 the number of credit hours prescribed in this subsection, shall remain eligible for
96 child support so long as such child is enrolled in and attending an institution of
97 vocational or higher education, and the child continues to meet the other
98 requirements of this subsection.

99 **(7)** A child who is employed at least fifteen hours per week during the
100 semester may take as few as nine credit hours per semester and remain eligible
101 for child support so long as all other requirements of this subsection are complied
102 with.

103 6. The court shall consider ordering a parent to waive the right to claim
104 the tax dependency exemption for a child enrolled in an institution of vocational
105 or higher education in favor of the other parent if the application of state and
106 federal tax laws and eligibility for financial aid will make an award of the
107 exemption to the other parent appropriate.

108 7. The general assembly finds and declares that it is the public policy of
109 this state that frequent, continuing and meaningful contact with both parents
110 after the parents have separated or dissolved their marriage is in the best
111 interest of the child except for cases where the court specifically finds that such
112 contact is not in the best interest of the child. In order to effectuate this public
113 policy, a court with jurisdiction shall enforce visitation, custody and child support
114 orders in the same manner. A court with jurisdiction may abate, in whole or in
115 part, any past or future obligation of support and may transfer the physical and
116 legal or physical or legal custody of one or more children if it finds that a parent
117 has, without good cause, failed to provide visitation or physical and legal or
118 physical or legal custody to the other parent pursuant to the terms of a judgment
119 of dissolution, legal separation or modifications thereof. The court shall also
120 award, if requested and for good cause shown, reasonable expenses, attorney's
121 fees and court costs incurred by the prevailing party.

122 8. The Missouri supreme court shall have in effect a rule establishing
123 guidelines by which any award of child support shall be made in any judicial or
124 administrative proceeding. Said guidelines shall contain specific, descriptive and
125 numeric criteria which will result in a computation of the support obligation. The
126 guidelines shall address how the amount of child support shall be calculated

127 when an award of joint physical custody results in the child or children spending
128 substantially equal time with both parents. Not later than October 1, 1998, the
129 Missouri supreme court shall publish child support guidelines and specifically list
130 and explain the relevant factors and assumptions that were used to calculate the
131 child support guidelines. Any rule made pursuant to this subsection shall be
132 reviewed by the promulgating body not less than once every four years to ensure
133 that its application results in the determination of appropriate child support
134 award amounts.

135 9. There shall be a rebuttable presumption, in any judicial or
136 administrative proceeding for the award of child support, that the amount of the
137 award which would result from the application of the guidelines established
138 pursuant to subsection 8 of this section is the correct amount of child support to
139 be awarded. A written finding or specific finding on the record in a judicial or
140 administrative proceeding that the application of the guidelines would be unjust
141 or inappropriate in a particular case, after considering all relevant factors,
142 including the factors set out in subsection 1 of this section, is required if
143 requested by a party and shall be sufficient to rebut the presumption in the
144 case. The written finding or specific finding on the record shall detail the specific
145 relevant factors that required a deviation from the application of the guidelines.

146 10. Pursuant to this or any other chapter, when a court determines the
147 amount owed by a parent for support provided to a child by another person, other
148 than a parent, prior to the date of filing of a petition requesting support, or when
149 the director of the division of child support enforcement establishes the amount
150 of state debt due pursuant to subdivision (2) of subsection 1 of section 454.465,
151 RSMo, the court or director shall use the guidelines established pursuant to
152 subsection 8 of this section. The amount of child support resulting from the
153 application of the guidelines shall be applied retroactively for a period prior to
154 the establishment of a support order and the length of the period of retroactivity
155 shall be left to the discretion of the court or director. There shall be a rebuttable
156 presumption that the amount resulting from application of the guidelines under
157 subsection 8 of this section constitutes the amount owed by the parent for the
158 period prior to the date of the filing of the petition for support or the period for
159 which state debt is being established. In applying the guidelines to determine a
160 retroactive support amount, when information as to average monthly income is
161 available, the court or director may use the average monthly income of the
162 noncustodial parent, as averaged over the period of retroactivity, in determining

163 the amount of presumed child support owed for the period of retroactivity. The
164 court or director may enter a different amount in a particular case upon finding,
165 after consideration of all relevant factors, including the factors set out in
166 subsection 1 of this section, that there is sufficient cause to rebut the presumed
167 amount.

168 11. The obligation of a parent to make child support payments may be
169 terminated as follows:

170 (1) Provided that the child support order contains the child's date of birth,
171 the obligation shall be deemed terminated without further judicial or
172 administrative process when the child reaches age twenty-two if the child support
173 order does not specifically require payment of child support beyond age
174 twenty-two for reasons provided by subsection 4 of this section;

175 (2) The obligation shall be deemed terminated without further judicial or
176 administrative process when the parent receiving child support furnishes a sworn
177 statement or affidavit notifying the obligor parent of the child's emancipation in
178 accordance with the requirements of subsection 4 of section 452.370, and a copy
179 of such sworn statement or affidavit is filed with the court which entered the
180 order establishing the child support obligation, or the division of child support
181 enforcement;

182 (3) The obligation shall be deemed terminated without further judicial or
183 administrative process when the parent paying child support files a sworn
184 statement or affidavit with the court which entered the order establishing the
185 child support obligation, or the division of child support enforcement, stating that
186 the child is emancipated and reciting the factual basis for such statement; which
187 statement or affidavit is served by the court or division on the child support
188 obligee; and which is either acknowledged and affirmed by the child support
189 obligee in writing, or which is not responded to in writing within thirty days of
190 receipt by the child support obligee;

191 (4) The obligation shall be terminated as provided by this subdivision by
192 the court which entered the order establishing the child support obligation, or the
193 division of child support enforcement, when the parent paying child support files
194 a sworn statement or affidavit with the court which entered the order
195 establishing the child support obligation, or the division of child support
196 enforcement, stating that the child is emancipated and reciting the factual basis
197 for such statement; and which statement or affidavit is served by the court or
198 division on the child support obligee. If the obligee denies the statement or

199 affidavit, the court or division shall thereupon treat the sworn statement or
200 affidavit as a motion to modify the support obligation pursuant to section 452.370
201 or section 454.496, RSMo, and shall proceed to hear and adjudicate such motion
202 as provided by law; provided that the court may require the payment of a deposit
203 as security for court costs and any accrued court costs, as provided by law, in
204 relation to such motion to modify.

205 12. The court may enter a judgment terminating child support pursuant
206 to subdivisions (1) to (3) of subsection 11 of this section without necessity of a
207 court appearance by either party. The clerk of the court shall mail a copy of a
208 judgment terminating child support entered pursuant to subsection 11 of this
209 section on both the obligor and obligee parents. The supreme court may
210 promulgate uniform forms for sworn statements and affidavits to terminate
211 orders of child support obligations for use pursuant to subsection 11 of this
212 section and subsection 4 of section 452.370.

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Bill

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